IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1033 OF 1997
with
CRIMINAL REVISION APPLICATION NO. 586 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINAJI SAVAJI DUNDI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ANIL S DAVE WITH MS. SHILPA SHAH for the Appellant.
MR ND GOHIL, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 11/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant was accused of having committed murder of Ramanbhai Kalabhai Vankar on 7.4.1995, at about 12.45 P.M., in the compound of Kankrej Arts College, at Thara, by inflicting a knife blow in chest of the deceased. He was tried by Sessions Court, Banaskantha, at Palanpur, and came to be convicted by judgment and order dated 10th September, 1997, rendered in Sessions Case No.77 of 1995, which has given rise to the present appeal.

2. The facts of the case, in brief, are that the appellant was appearing at the T. Y. B.A. examination on the day of the incident. Deceased Ramanbhai Kalabhai Vankar was the Observer appointed by the University and he found that the appellant was indulging in copying. He, therefore, made out a copy case against him by taking the appellant to the Principal. This occurred at about 5 minutes past 12.00 noon. At about 12.45 P.M., a scream by the deceased

was heard by various persons in the class room either appearing at the examination or supervising the students. They rushed out to see that the deceased was staggering in an injured condition with blood coming out of the injury on his chest and the appellant standing their with a knife in his hand full of blood. P.W.1-Vikramsing Chandrasing had rushed there and apprehended the appellant and shouted for help whereupon Senior Supervisor, D.D. Jhala reached there and snatched away the knife. The other persons also arrived and, ultimately, the appellant was locked in a room. The police was summoned. By that time, the deceased had succumbed to the injury. The appellant was arrested, the knife was seized and other investigation was made, on the basis of an F. I. R. given by P. W.7-Dr. Manibhai Prajapati, Principal of the college. The police having found material against the appellant filed charge sheet before Special Court, Banaskantha, at Palanpur, as it was found that the deceased belonged to Scheduled Caste and offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as “the Atrocities Act” for short) was constituted. On Special Case No.77 of 1995 being registered, learned Special Judge framed charge at Exhibit 4 for

offences punishable under Section 302 of the Indian Penal Code, Section 135 of the Bombay Police Act and Section 3(2)(v) of the Atrocities Act. The accused pleaded not guilty to the charge and claimed to be tried. The learned Judge, ultimately, found that the prosecution was successful in establishing charges for offences punishable under Section 302 of I. P. C. and Section 135 of the Bombay Police Act and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for one year and to undergo rigorous imprisonment for four months and a fine of Rs.100, in default, to undergo rigorous imprisonment, respectively, for one month for the said offences. The learned Judge, however, concluded that the prosecution was not able to establish charge for offence punishable under Section 3(2)(v) of the Atrocities Act and recorded acquittal therefor.

3. On being convicted, the appellant preferred present appeal, which came up for admission hearing before this Court (Coram: S. M. Soni and C. K. Buch, JJ.) on 28th September, 1998, where the following order was passed :-

"Admit. However, notice for enhancement of sentence under Section 401 to issue. Bail refused."

4. Following the above order, Criminal Revision Application No.586 of 1998 came to be registered.

5. Learned Advocate, Ms. Shilpa Shah, appearing with Mr. A. S. Dave, submitted that the Trial Court committed an error in appreciating the evidence. The Court overlooked the fact that there is no eye-witness to the incident, there is no evidence on genesis of the incident or even to the sequence of the incident. Ms. Shah submitted that the evidence led by the prosecution is inconsistent and self-contradictory on the question as to how the witnesses came to know about the incident. Though all of them say that they heard a shout, which prompted them to go out of the class room and to see what had happened, the nature of shout which they claim to have heard is different. Ms. Shah submitted that the conduct of the appellant, as noticed by these witnesses, is also remarkable, which is not considered by the Trial Court. According

to Ms. Shah, it has come in evidence of the witnesses that the appellant did not resist his apprehension. He was found standing their mutely even as per the prosecution case. He has readily surrendered the knife. He has not tried to escape from the place of incident. All these factors would point at his innocence. In his statement under Section 313, he has stated that, he has been falsely implicated while he was passing by the staircase of the college. Ms. Shah submitted that it has come in evidence of P.W.5-Mansangbhai Virabhai Patel that no chit was found from the appellant or no chit was found lying at the place around him and still he was booked for copying. This would enrage any innocent man more so when he is very young and it is a question of his career. Ms. Shah submitted that the incident can be said to have occurred without premeditation and in heat of passion and, therefore, even if the Court finds that the prosecution evidence is otherwise acceptable, then also the case would attract exception 4 to Section 300 of I. P. C. and, therefore, the appellant may be awarded lesser punishment by recording conviction under Section 304 of I. P. C. Ms. Shah submitted that the appellant is alleged to have inflicted only one blow with a knife in the background of the

circumstances indicated hereinabove and, therefore also, the case would attract exception 4 to Section 300, where the appellant cannot be said to have taken undue advantage of the situation or acted in an unruly harsh manner. Ms. Shah, therefore, submitted that the appeal may be allowed by giving benefit of doubt to the accused or, alternatively, the appeal may be partly allowed by altering the conviction to one under Section 304 of I. P. C.

5.1 So far as the suo motu Criminal Revision Application is concerned, Ms. Shah submitted that the case cannot be construed as one of the rarest of rare cases where capital punishment is necessary to be imposed. The applicant cannot be considered as a menace to the society and, in his remaining life, he is not likely to cause any risk to the society. It cannot be said that there is no chance for his further improvement and death is the only penalty that can be awarded. Under the circumstances, the notice for enhancement may be discharged.

6. Learned Additional Public Prosecutor, Mr. Gohil, has opposed this appeal. According to him, here is a case of a student,

who has, rather than respecting a teacher by good conduct, caused death of his teacher on the teacher's insistence for good conduct. Mr. Gohil submitted that, though there is no direct evidence, the circumstantial evidence is no lesser than direct evidence. There are witnesses who have reached the spot within moments of the incident and have seen the deceased in an injured condition and the appellant standing by his side with a blood stained knife in his hand. Mr. Gohil submitted that the deceased had pointed to the appellant as the person who assaulted him as he was not able to speak. Mr. Gohil submitted that the appellant had no reason to carry a knife with him, and that too, a knife which is 33 cms. in length, with which he caused a 6 cms. deep injury in the chest of the deceased, which has resulted into his death. Mr. Gohil submitted that there is no evidence to support the defence taken by the accused to attract any of the exceptions of Section 300 of I. P. C. Mr. Gohil also submitted that the ingredients of exception 4 to Section 3000 are totally absent and, therefore, the case cannot fall within the definition of culpable homicide not amounting to murder. Mr. Gohil, therefore, submitted that the evidence, though circumstantial in nature, is strong enough to establish the guilt of

the accused and there is no material to raise any doubt on the evidence and, therefore, the conviction is rightly recorded. Because there is absence of material to infer any of the ingredients of exceptions to Section 300 of I.P.C., the conviction is rightly recorded for murder. The appeal may, therefore, be dismissed.

6.1 So far as the suo motu revision is concerned, learned Additional Public Prosecutor submitted that the appellant acted in an unruly manner and committed murder of a teacher, who insisted for discipline and, therefore, for setting an example, capital punishment may be awarded.

7. We have examined the record and proceedings and have considered the same in light of the submissions made by rival sides.

8. The oral evidence on the aspect of incident consists of depositions of Vikramsinh Chandrasinh (Exhibit 8), Mayankkumar Manilal Joshi (Exhibit 20), Mansangbhai Virabhai Patel (Exhibit 27), Girishbhai Ishwarbhai Thakar (Exhibit 32), Dr. Manilal

Ishwarbhai Prajapati (Exhibit 37) and Devendrasinh Dalpatsinh Jhala (Exhibit 41).

9. P.W.1-Vikramsinh Chandrasinh was working as a Lecturer in English in the Kankrej Arts and Commerce College on the date of the incident. On that day, while the exams were going on, he was performing duty as a Supervisor. He states that the deceased-Ramanbhai Kalabhai Vankar had come to the college as an Observer, although he was working at Palanpur College. He says that, when he was supervising exams at Block No.4, he heard a scream "Aah" at about 12.45 P.M. from outside. He, therefore went out and noticed that students of blocks No.1, 2 and 3 had come out. A student, whose name he later on learnt to be Dinaji Savaji Dundi (the accused) was standing with a knife in his hand. It was a Rampuri knife and it was blood stained. He also saw Observer-Ramanbhai Vankar staggering. The witness says that he, therefore, rushed and apprehended the accused because he had a knife in his hand. Thereafter, he raised shouts for help, whereupon Senior Supervisor, D. D. Jhala, came to his rescue and took away the knife from the hand of the accused. In the meantime, the

Principal also came so also the Librarian, Vice-Principal, Head Clerk, etc. The Librarian opened a room where he lodged the accused and bolted the doors from outside. He says that he saw Ramanbhai Vankar in front of block No.4 in a bleeding condition. The witness says that deceased-Vankar said that he was assaulted upon by the student who was apprehended as he (the deceased) had caught him copying. Head Clerk, Isubha Gumansinh Vaghela, was sent to Thara Police Station for informing the police about the incident. As a result, P.S.I. came there. The deceased was taken to Primary Health Centre in a jeep car. Supervisor, D. D. Jhala, was also with him. The doctor, after examining the deceased-Ramanbhai Vankar, declared him to be dead. He says that an FIR was given by Principal, Manibhai Ishwarbhai.

9.1 The witness has been cross-examined at length and he admits that he has not seen the actual occurrence. He admits during cross-examination that, on that day, another copy case was also registered against a T. Y. B.A. Student by deceased-Vankar. He says that when he went out of the room, he saw Ramanlal Vankar staggering and falling in front of block No.4, whereas the accused

was standing in front of block No.1. The accused did not try to escape nor did he chase Vankar. He admits that when he apprehended the accused, he did not try to escape or to cause any injury.

9.2 P.W.3-Mayankkumar Manilal Joshi (Exhibit 20) was working as Junior Supervisor in block No.1. This is the block where the accused was appearing at the examination. The witness says that the deceased had come to that block at about 11.15 A. M. and warned the students to tender whatever material they may have for copying, otherwise, he would book the students in copy cases. He says that then about 12 o' clock Vankar came to the block again and booked candidate at Seat No.4615 (whom he identifies as the accused) and took way his answer book and a chit found from him. In the meantime, Senior Supervisor, Shri Jhala, came to the block and, thereafter, the accused was taken by the deceased and Jhala towards the office of the Principal. This has happened at about 5 minutes past 12.00 noon. Thereafter, after about half an hour, he heard a shout from the lobby outside. The students wanted to go out of the class room, but he prevented them and

persuaded them to appear at the examination. Thereafter, he saw the deceased lying in front of block No.4 in a bleeding condition. This witness is also cross-examined at length. He admits to have not stated before police about arrival of the deceased at 11.15 A.M. and warning the students. He also admits that he had not stated before police about the deceased going to student at Seat No.4615, catching the student for copying, arrival of Senior Supervisor Jhala and both of them taking the students towards the office of the Principal.

9.3 P.W.5-Mansangbhai Virabhai Patel (Exhibit), who was a student appearing at the examination in the same block at Seat No.4630, says that he was sharing the same bench with the accused. He states that the deceased had come and took away the supplement of the accused and, thereafter, the accused went out, whereas the deceased went towards the office of the Principal and, thereafter, after about 15 to 20 minutes, he heard shouts for help. Therefore, they ran towards the door and found deceased-Vankar lying in a bleeding condition unable to speak. He says that the Principal and Vikramsinh came there and asked them to appear at

the examination. During cross-examination, he says that, after he came out of the room on hearing the shouts, Vikramsinh arrived there after about 5 to 10 minutes, followed by Shri Jhala, who was followed by the Principal after about 10 minutes.

9.4 The first informant, Dr. Manibhai Ishwarbhai Prajapati, who was the Principal of the college, is examined at Exhibit 37. He also supports the version given by earlier two witnesses. He says that around five minutes past 12.00 noon, Ramanbhai Kalabhai Vankar had brought the accused with him, whom he had caught copying. He says that, thereafter, he sent them to the Clerk for recording the statement. The student refused to give statement. Therefore, he was so informed by the clerk concerned. Thereafter, at about 12.45 P.M., he heard a hubbub and, therefore, he went downstairs and found that Supervisors Jhala and Vikramsinh had apprehended the accused, who had a knife in his hand, which was blood stained. He also saw Supervisor-Vankar lying in the lobby, who told him that the said student (the accused) inflicted him a knife blow. He says that he found that Vankar had expired in the lobby itself. He says that he had given the F.I.R. to the police. The

witness has been cross-examined at length and certain improvements and omissions are brought on record, as per his admission. The witness admits to have not stated before police about the deceased-Ramanbhai Kalabhai Vankar bringing the accused to him about five minutes past 12.00 noon and having sent them to the Clerk for recording statement. He also admits that he had not stated before police that Shri Jhala had snatched away the knife from the hand of the accused, which he gave it to me and put the same in his chamber. The cross-examination, though lengthy, does not bring out any material to affect the version of the witness on the incident.

9.5 P.W.8-Devendrasinh Dalpatsinh Jhala (Exhibit 41) also deposes as per the evidence of earlier witnesses. He states that he snatched away the knife from the accused and gave it to the Principal. The cross-examination indicates that the witness has made improvements in his deposition on the details of the procedure followed for the copy case. He admits to have not stated before police that he had snatched away the knife from the accused and that the Principal had also come there rushing. He also admits

that he has not stated before police that he had handed over the knife to the Principal. The rest of the deposition is not significant so far as the incident is concerned.

9.6 The medical evidence is in the form of deposition of Dr. Natubhai Raghuram Thakkar (Exhibit 16) and Postmortem Notes (Exhibit 17). The evidence indicates that the doctor noticed an injury on right side of the chest in the intercostal space between ribs No.5 and 6. The wound was 6 cms. in length and 2 cms in width going to the thoracic cavity. There was damage to the right lung. The heart was empty and severed. The injury on chest was sufficient in ordinary course of nature to cause death and was antemortem. He says that the injuries were possible to be caused by muddamal article-knife. The cut marks found on the bush-shirt and the banian of the deceased were possible with the knife and cause of death of the deceased was haemorrhage due to injury on chest involving right lung, a vital organ.

10. From the above evidence, we are left with no doubt that the deceased met with a homicidal death. The death occurred

because of injury on right side of the chest, which was possible with the muddamal knife. The banian and the bus-shirt, which were worn by the deceased at the time of the death have a corresponding cut and, therefore, we confirm the finding of the Trial Court that the deceased met with homicidal death.

11. So far as the evidence on occurrence is concerned, we find that there is no direct evidence. There is no witness who has actually seen the accused causing injury to the deceased, but the evidence that we have before us is in the form of deposition of witnesses, who reached the spot within moments of the occurrence. Their presence at the time of the incident is natural and is established to the hilt. They claimed to have heard scream of the deceased “Aah”. P.W.1-Vikramsinh rushed there and apprehended the accused, who was found to be having a knife in his hand, which was blood stained. Then he raised shouts. Those shouts for help were heard by other witnesses and they also rushed to the spot. P.W.8-D. D. Jhala snatched away the knife from the hand of the accused and then the accused was lodged into a room which was bolted from outside. The police was immediately summoned, F.I.R.

was taken, accused was apprehended and the knife was seized.

12. The evidence is, therefore, very clear to connect the appellant with the incident. He had a motive for indulging in the offence, which is established through evidence of these witnesses, who say that the appellant was caught copying by the deceased. This aspect is proved not only through oral evidence, but also through contemporaneous record, which is brought on record through deposition of these witnesses and, therefore, involvement of the appellant in the incident is properly established by the prosecution.

13. Now, comes the question whether the appellant is rightly convicted for offence of murder or he should have been convicted for the offence of culpable homicide not amounting to murder.

13.1 The appellant was a student appearing at the examination. He had no reason to carry a knife with him. It was argued that there is no evidence to show that the accused had the

knife with him from the beginning. The contention is right that there is no direct positive evidence in this regard, but an inference has to be drawn from the circumstances in which the incident occurred. The accused is caught copying, is made to leave the class room, then taken to the Principal and, thereafter the incident occurs. There is no evidence that, in the meantime, the appellant had gone out of the premises and the necessary inference, therefore, is that he had a knife with him from the beginning. If we look at the nature of the knife, it is not a knife which he could have laid hands on at the time of occurrence from surrounding place. It is a Rampuri knife with 35 cms. length and a blade of 15 cms. and not an ordinary knife. We are, therefore, inclined to belief that the appellant had this knife with him from the beginning.

13.2 Assuming for a moment that the appellant did not have a knife with him from the beginning, then the necessary inference is that, after he was driven out of the class room, he immediately procured the knife from somewhere and on the deceased coming out of the room, committed the assault.

13.3 Either of the above situation go adverse to the case of the appellant.

13.4 The appellant has used the said knife by causing injury on vital part of the body of the deceased, namely, chest. The injury has been inflicted with such a force that it has gone deep into the thoracic cavity and has ruptured vital organs like lungs and other muscles. The injury is caused upon a person who was defenceless. He had no weapon with him in defending himself and the assault is committed on an issue where the appellant was prevented from further appearing at the examination because of his prima facie involvement in malpractice at the examination. All these factors collectively lead us to conclude that the appellant has been rightly convicted for offence of murder.

13.5 The contention that the offence that would be constituted would be punishable Under Section 304 and not 302 is not possible to be accepted. None of the ingredients of exception 4 to Section 300 pressed into service by learned Advocate for the appellant is found to be present. There is no evidence whatsoever

to infer that there was a quarrel, there was sudden fight or sudden quarrel or that the appellant was gripped with heat of passion nor are we in a position to accept that there was no premeditation because we find that the appellant had a Rampuri knife with him from the beginning or at best he procured it just before the incident and after he was driven out of the class room. The size of the kinfe is singificant. In absence of any material to conclude presence of circumstances leading to any of the exceptions to Section 300, it is not possible to accept that the case would fall within the definition of culpable homicide not amounting to murder. In our view, therefore, the appeal is devoid of merits and has to fail.

14. We may record that the Trial Court has recorded acquittal so far as offence under the Atrocities Act is concerned, against which, there is no appeal by the other side. That acquittal thus acquired finality.

15. The appellant is alleged to have been armed himself with a knife, which is of the size of about 13 inches, the blade of

which was of the size of 6 inches with a breadth of ½ to 1 inch. This is not an ordinary knife and would certainly fall in the category contemplated in notification under Section 37(1) of the Bombay Police Act, which was in force on the day of the incident as can be seen from Exhibit 53 and, therefore, we find that the conviction under Section 135 of the Bombay Police Act has rightly been recorded by the Trial Court.

16. Now comes the question regarding quantum of punishment. The Trial Court has awarded imprisonment for life for the offence of murder. While admitting this appeal, a notice for enhancement of sentence under Section 401 was ordered to be issued. Accordingly, it was issued and Criminal Revision Application No.586 of 1998 came to be registered. We have heard learned advocate for the appellant and learned Additional Public Prosecutor on this aspect. The sum and substance of the arguments of learned advocate for the appellant is that this is not a rarest of rare case. Learned Additional Public Prosecutor, though contended that this would be a rarest of rare cases, was not in a position to substantiate his contention.

16.1 We have assessed the evidence. We find that there is no direct evidence to implicate the appellant but the circumstantial evidence is sufficient to implicate the appellant for the offence of murder. We have no material which would show that it is a case of extreme culpability. When the incident occurred, the appellant was aged about 20 years. He was removed from examination hall on charge of copying. Necessarily, this would result into negation of his chances of succeeding at the examination and he has committed the offence may be in retaliation or as a strong reaction. He had no previous animosity with the deceased. He had no reason to anticipate presence of the deceased as an observer on the day of incident. He has inflicted, though fatal, only a single blow. The witnesses have opined that the appellant had been a regular student with no criminal antecedents. With this background, we are of the view that the offence does not assume that high a magnitude of crime that we should opt for death penalty. It is a settled proposition of law that life imprisonment is the rule and death sentence is an exception. We have no circumstance before us to conclude that life imprisonment would be and inadequate

punishment having regard to the circumstances of the case and, therefore, after giving due consideration to the question of quantum of punishment, we are of the view that life imprisonment would be adequate punishment to the appellant. The criminal revision application, therefore, must fail and notice would stand discharged.

17. We notice that the appellant, after being lodged into the prison, had absconded somewhere in June 1998 and surrendered only on 25th May, 2006, i.e. after 2902 days, and is presently in the prison.

18. In light of the foregoing discussion, the appeal is devoid of merits and is dismissed. Judgment and order of conviction and sentence of the Trial Court impugned herein is hereby confirmed.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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